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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *W*

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEWAYNE E. SHAVERS,

Plaintiff,

vs.

OFFICE OF DISABILITY ADJUDICATION
AND REVIEW,

Defendant.

CASE NO. 12-CV-1544 BEN (KSC)

ORDER:

**(1) DISMISSING ACTION
WITHOUT PREJUDICE**

**(2) DENYING AS MOOT MOTION
TO PROCEED *IN FORMA*
*PAUPERIS***

[Docket No. 2]

On June 22, 2012, *pro se* Plaintiff Dewayne Shavers filed a Complaint against the Office of Disability Adjudication and Review. (Docket No. 1.) Plaintiff also filed a motion to proceed *in forma pauperis*. (Docket No. 2.) The Court decides the matters on the papers submitted. For the reasons outlined below, the Court **DISMISSES** the action without prejudice and **DENIES** as moot Plaintiff's motion to proceed *in forma pauperis*.

BACKGROUND

The Complaint appears to contest the denial of Plaintiff's disability benefits by the Office of Disability Adjudication and Review. The Complaint is written on a form entitled "Request for Appointment of Counsel Under the Civil Rights Act of 1964, 42 U.S.C. 2000e 5(f)(1); Declaration in Support of Request," and does not include any facts establishing that Plaintiff is entitled to receive disability benefits, why the disability benefits were denied, or why this denial of benefits was

wrongful. A form entitled "Notice of Appeals Council Action" stating that the Office of Disability Adjudication and Review denied Plaintiff's disability benefits is attached to the Complaint.

DISCUSSION

I. *SUA SPONTE* SCREENING AND DISMISSAL

A complaint filed by any person proceeding, or seeking to proceed, *in forma pauperis* under 28 U.S.C. § 1915(a) is subject to mandatory *sua sponte* review and dismissal if the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from suit. 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000).

The legal sufficiency of a complaint is tested under Federal Rule of Civil Procedure 12(b)(6). *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Under Rule 12(b)(6), dismissal is appropriate if the complaint fails to state a facially plausible claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007). That is, the complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of the claim. *Id.* at 556. Dismissal is also appropriate when the complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). The court must assume the truth of all factual allegations and construe them in the light most favorable to the plaintiff. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). *Pro se* litigants are not "excused from knowing the most basic pleading requirements." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107 (9th Cir. 2000).

Here, the Complaint does not include any facts establishing that Plaintiff is entitled to receive disability benefits, why the disability benefits were denied, or why this denial of benefits was wrongful. Accordingly, the Complaint fails to state a facially plausible claim for relief. The Complaint is, therefore, **DISMISSED WITHOUT PREJUDICE**.

II. MOTION TO PROCEED *IN FORMA PAUPERIS*

Because Plaintiff's Complaint is dismissed, Plaintiff's motion to proceed *in forma pauperis* is **DENIED** as moot.

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CONCLUSION

For the reasons stated above, the Complaint is **DISMISSED WITHOUT PREJUDICE**.
Plaintiff is granted leave to file an amended complaint that corrects the deficiencies outlined above.
Any such amended complaint must be filed no later than **October 29, 2012**.

The motion to proceed *in forma pauperis* is **DENIED** as moot. If Plaintiff wishes to renew
his motion to proceed *in forma pauperis*, he must file a new motion to proceed *in forma pauperis*
along with an amended complaint.

IT IS SO ORDERED.

DATED: September 17, 2012


HON. ROGER T. BENITEZ
United States District Judge